

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW JERSEY

3 UNITED STATES, . Case No. 2:08-MJ-03641-MF-1  
4 Petitioner, . NEWARK, NEW JERSEY  
5 v. . Tuesday, December 23, 2008  
6 MARIA MAGDALENA PACHECO . 11:08:31 a.m.  
7 BOLANOS aka VERONICA .  
8 GIRON SOLARES aka MARIA .  
9 PACHECO CARVAJAL, .  
Respondent. .  
. . . . .

10  
11 TRANSCRIPT OF EXTRADITION HEARING  
12 BEFORE THE HONORABLE MARK FALK  
UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Petitioner: LAKSHMI SRINIVASAN HERMAN  
15 UNITED STATES ATTORNEY'S OFFICE  
16 970 Broad Street, 7<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 645-3985  
17 GRACE H. PARK  
18 UNITED STATES ATTORNEY'S OFFICE  
19 970 Broad Street, 7<sup>th</sup> Floor  
Newark, NJ 07102  
(973) 645-2718

20  
21 Court Recorder:

22 Transcription Service: King Transcription Services  
23 65 Willowbrook Boulevard  
Wayne, New Jersey, 07470  
(973) 237-6080

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

APPEARANCES CONTINUED:

For the Respondent:

HOWARD W. BAILEY  
Bailey & Orozco, LLC  
The National Newark Building  
744 Broad Street, Suite 1901  
Newark, New Jersey 07102  
(866) 919-6193

\_\_\_\_\_  
\_\_\_\_\_  
MICHAEL A. OROZCO  
Bailey & Orozco, LLC  
The National Newark Building  
744 Broad Street, Suite 1901  
Newark, New Jersey 07102  
(866) 919-6193

Interpreter:

SARA GARCIA-RANGEL

INDEX

<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>	<u>Further Redirect</u>
---------------	--------------	------------------	-----------------	-------------------------

WITNESSES FOR PETITIONER:WITNESSES FOR RESPONDENT:

Fernando Sanchez Chucone	25,26	28,29		
--------------------------	-------	-------	--	--

ARGUMENTS:Page

BY: MS. HERMAN

5

BY: MR. BAILEY

11

BY: MR. OROZCO

16

EXHIBITS:MarkedReceivedPetitioner's:

Government Exhibit 1 - Petition

6

Respondent's:

D-1,D-2,D-3 Three testimonies

25

SUMMATIONS:Page

BY: MR. OROZCO

30

BY: MS. PARK

35

1        NEWARK, NEW JERSEY, TUESDAY, DECEMBER 23, 2008, 11:08 A.M.

2        (Call to Order of the Court.)

3                COURT CLERK: The Court calls USA v. Bolanos.

4                THE COURT: Can I have the appearances of Counsel,  
5 please.

6                MS. HERMAN: Good morning, Your Honor. Assistant  
7 United States Attorney Lakshmi Srinivasan Herman, on behalf of  
8 the Government.

9                With me, at Counsel Table, is Grace Park.

10               THE COURT: Good morning.

11               MS. PARK: Good morning.

12               MR. BAILEY: Good morning, Judge. Howard Bailey,  
13 from the firm of Bailey and Orozco, on behalf of our client,  
14 Ms. Pacheco Bolanos.

15               With me is my partner and co-counsel on this matter,  
16 Michael Orozco.

17               THE COURT: Good morning. I think --

18               MR. OROZCO: Good morning, Judge.

19               THE COURT: -- I think we should begin the proceeding  
20 by swearing the interpreter in this case. Sara?

21        S A R A    G A R C I A - R A N G E L, INTERPRETER, SWORN

22               COURT CLERK: Can you kindly state your name for the  
23 record.

24               INTERPRETER: Sara Garcia-Rangel.

25               COURT CLERK: Thank you.

1           THE COURT: All right. This is an extradition  
2 hearing. The parties have submitted memoranda, together with  
3 declarations and certain exhibits, in support and in opposition  
4 of -- of the application. And the Court has carefully read  
5 them.

6           I -- I suppose I'll hear briefly from the Government,  
7 at this point, and then we'll hear from -- from defendant.

8           MS. HERMAN: Your Honor, thank you.

9           THE COURT: Mmm-hmm.

10          MS. HERMAN: As -- as you know, Ms. Bolanos has been  
11 indicted in Costa Rica as an accessory to homicide. And it's  
12 the Government's position that there is sufficient evidence to  
13 proceed with extraditing her to Costa Rica.

14          The Court -- a Court in Cartago has already made a  
15 determination that there is sufficient evidence, said there is  
16 nothing for this Court to do except to extradite her to Costa  
17 Rica. However, if the Court believes otherwise, the  
18 Government's reply brief also sets forth additional evidence  
19 against the fugitive, which is more than sufficient to  
20 establish probable cause.

21          The Federal Probable Cause Stand(sic) applies --  
22 Standard applies here. Probable cause signifies evidence  
23 sufficient to cause a person of ordinary prudence and caution  
24 to conscientiously entertain a reasonable belief of the  
25 accused's guilt.

1           A Reviewing Court will sustain the finding of  
2 probable cause in an extradition case if there is any evidence  
3 to support it.

4                           (Pause in hearing)

5           MS. HERMAN: Your Honor, may -- may I approach?

6           THE COURT: Sure.

7           MS. HERMAN: I'd like to move into evidence documents  
8 that have been previously submitted as Government's exhibit 1.

9           THE COURT: Mr. Bailey, have you seen this --

10          MR. BAILEY: Judge, we have received that -- we had  
11 received a copy of that from the Government itself, when we  
12 became counsel to Ms. Pacheco Bolanos. And -- so, Judge, I  
13 don't see any basis for me to object to it, because it is, in  
14 fact, the petition.

15          THE COURT: Okay. Well, that's fine. I've also seen  
16 it. It has been submitted to me, but, so Government Exhibit 1  
17 will be made a part of the record in this case.

18          MS. HERMAN: Your Honor, in our brief, we listed all  
19 the examples of why there is probable cause in this case.  
20 Briefly, I will go over those for the Court.

21                 Two witnesses, Martin Carvigel Villalabos (phonetic)  
22 and Mariano Rodriguez (phonetic), stated that, when they were  
23 leaving Ms. Bolanos's former lover's home, where she and  
24 Montaro Romero (phonetic) had lived, they saw a blond woman  
25 with the basic characteristics of the fugitive arrive.

1           And another witness, who was a caretaker of a  
2 warehouse property across from where the fugitive lived, Mr.  
3 Vargas, provided a complete description of the physical  
4 characteristics of Pacheco Bolanos, whom he saw yelling when  
5 the victim was being carried out of the house by the fugitive  
6 and others.

7           Furthermore, the victim took evidence of the crime,  
8 including a shovel, a bread(sic) -- a bread(sic) -- a  
9 bedspread, rather, with blood, and disposed of it on the same  
10 day as the victim's murder.

11           It was the fugitive, herself, who took the officers  
12 in Costa Rica to the place where she disposed of the evidence  
13 of the crime.

14           The day of the murder, November 19, '90(sic) -- '97,  
15 the fugitive also took the vehicle used in the homicide and had  
16 all four tires changed, so that the tire tracks at the scene of  
17 the crime would not match her new tires.

18           A witness, by the name of Carlos Salazar (phonetic),  
19 who worked at the tire shop, confirmed that the fugitive asked  
20 him to replace the four tires in her car, which he did. The  
21 tires were then seized from the car shop.

22           A comparison of the prints made of the grounds of the  
23 farm where the fugitive -- where the victim was found and the  
24 fugitive's car tires share that the characteristics in class,  
25 regarding the structure, shape, and external aspect, as to the

1     tires that were seized from the sh -- car shop match with those  
2     -- match with the tires of the fugitive's car.

3             The day after the murder, the fugitive also washed  
4     her car to remove all evidence of the crime.

5                     (Pause in hearing)

6             In -- in addition, late yesterday, we received a  
7     letter from a prosecutor in Costa Rica --

8             MR. BAILEY: Judge, I object to that letter being  
9     introduced at this time.

10            THE COURT: Well, let's just hear about it first,  
11     okay?

12            MR. BAILEY: Thank you, Judge.

13            THE COURT: All right.

14            MS. HERMAN: We pr -- the Government provided a -- a  
15     copy of the letter and an unofficial translation to the letter  
16     -- of the letter, rather, to Defense Counsel at the first  
17     available opportunity, which was earlier -- early this -- this  
18     -- this morning when we arrived in court, Your Honor.

19            In -- in part, the letter states that --

20            MR. BAILEY: I object to this phrasing of what's in  
21     the letter, Judge, without the determination that the letter,  
22     itself, is admissible, at this juncture.

23            THE COURT: Well, all right --

24            MS. HERMAN: Would --

25            THE COURT: -- I think, you know, the -- the -- the



1 -- the standard for the admissibility of evidence in a -- in an  
2 extradition proceeding, I think you're aware of, and has been  
3 eluded to, and it's a very -- the -- the Federal Rules of  
4 Evidence don't a -- apply --

5 MS. HERMAN: Don't apply.

6 THE COURT: -- and et cetera. And I -- I'm -- I'm  
7 going to hear what has been said, and then we'll let you have  
8 your objection to it. I have no idea what it is. But I think,  
9 in the spirit of an extradition proceeding, there should be no  
10 limitation on what the Court can hear.

11 I'm not thrilled that this is happening at the last  
12 minute, but I don't know what the reason that -- for it is.

13 MR. BAILEY: Thank you, Judge.

14 THE COURT: Thank you.

15 MS. HERMAN: In -- in -- in brief, in part, the  
16 letter states that, in the presence of her lawyer, the fugitive  
17 stated that she changed the tires of the car that she was  
18 driving, in which the body of the victim was transferred, where  
19 the body was ultimately abandoned, and that the tires were in  
20 good condition. And she also got rid of a firearm, a rifle,  
21 which was arguably used to kill the victim.

22 Your Honor, this -- this letter has not been  
23 certified, but we're -- if necessary, we'll get this certified.  
24 The Government's position is there is sufficient probable  
25 cause, despite this letter, for you to find that the fugitive

1 is extride(sic) -- should be sent back to Costa Rica.

2 THE COURT: Okay.

3 MS. HERMAN: It's also our understanding that the  
4 Defense will offer a witness -- they have a witness that they  
5 want to testify here, with regard to certain documents that  
6 have been submitted.

7 (Pause in hearing)

8 Our position is that the witness should not be  
9 allowed to testify, because any testimony he would give would  
10 be contradictory and not explanatory. And it would not be  
11 sufficient to obliterate PC in this case.

12 Furthermore, he is not the custodian of records, so  
13 any testimony he would give, with regard to documents that have  
14 been submitted by the defendant, would not be competent.

15 And also, all the documents that have been submitted  
16 by the Government, on behalf of Costa Rica, need to be taken as  
17 true. Because to do so would defeat the purpose of the treaty.

18 And -- and one last issue, Your Honor, the Defense  
19 has raised the point that the documents that the Government has  
20 submitted as Exhibit A were not properly certified. It's our  
21 position that, under Title 18, United States Code Section 3190,  
22 which governs admissibility, these documents are properly  
23 certified and, therefore, conclusively admissible.

24 Thank you, Judge.

25 THE COURT: Thank you. Mr. Bailey?

1 MR. BAILEY: Judge, thank you. Judge, I just want to  
2 ask the Court's indulgence on this. Both Mr. Orozco and I  
3 would like to address certain issues separately on this. And,  
4 if the Court will permit, I will start off, and then Mr. Orozco  
5 will finish, regarding the -- the closing comments -- one other  
6 issue and a closing comment?

7 THE COURT: That's fine.

8 MR. BAILEY: Thank you, Judge.

9 Judge, as set forth in the Defense brief, I think  
10 that the -- the initial issue, given the papers that comprise  
11 the petition itself, call into question what the evidentiary  
12 standard is. What is the Court supposed to be looking at? Is  
13 the Court -- and with the Court's indulgence, I'm just going to  
14 refer to 18 USC Section 3190 as Section 3190, Judge.

15 Is the standard, Section 3190, which would control if  
16 there was no specific language in the body of the treaty  
17 itself? Well, it turns out that there is specific language in  
18 the treaty. And, as set forth in our brief, Judge, I believe  
19 that, under the case that would control -- at least one of the  
20 case -- several of the cases that would control, among them,  
21 Grechy(phonetic) versus Burton, as I believe it's on page four  
22 of our brief, that, where there is specific language in a  
23 treaty, that the language of the treaty and the applicable  
24 standard, 3190, need to be examined to see which is the latest.  
25 Because both, under the United States Constitution, have the

1 same level of authority and control the same way, so whichever  
2 is the latest is going to control.

3 The language, respectfully Judge, in the treaty,  
4 indicates that the laws of the requested country control what  
5 is admissible. It is not simply the language of what is in  
6 section 3190. If that were true, Judge, quite frankly it would  
7 make no sense -- the -- the prior rulings of the Court itself  
8 would make no sense to be able to say, well, if the treaty says  
9 that it's the laws in the requested state, and if that specific  
10 phrase were to be interpreted as mean -- well, see Section  
11 3190, then that -- that case in Grechy versus Burton is, I  
12 would submit to the Court, has very little value.

13 I submit to the Court, respectfully Judge, that what  
14 that specific language in the treaty says is that the rules,  
15 notwithstanding Section 3190, notwithstanding that no there's  
16 other provisions that say the Rules of Evidence don't apply in  
17 extradition hearings, that that treaty, in essence, wipes those  
18 statutory provisions from consideration, where a treaty does  
19 contain this kind of language.

20 And so, respectfully Judge, I would submit that,  
21 notwithstanding that under most circumstances the Rules of  
22 Evidence would not apply where you have a treaty that contains  
23 specific language, it supercedes the -- the provisions in the  
24 US Code. And that is the address in point A of our brief,  
25 Judge.

1           And so I submit to the Court that, as an initial  
2 consideration, that the applicable standard here is not 3190.

3           Second, Judge, even if Section 3190 controls, for the  
4 sake of argument, cer -- Section 3190 controls, Section 3190  
5 specifically addresses what is evidence. In essence, Judge,  
6 it's the kind of things we, as lawyers and you as a Judge, see.  
7 It's affidavits. It's a deposition. These are documents that  
8 are taken, under controlled circumstance, and to which there is  
9 an attestation.

10           And -- and this is an issue, Judge, that Mr. Orozco  
11 will be going into more, regarding the Exhibits attached to our  
12 brief, that was being, in specific, three statements that are,  
13 in fact, referenced by Costa Rica and now relied upon by the US  
14 Attorney's Office in arguing for a certificate of  
15 extraditability.

16           Those statements, Judge, are referenced and -- I'm  
17 trying to put the nicest face I can on this -- interpreted by  
18 the Costa Rican Prosecutor, but they're not attached.

19           Now, Judge, if, on examination, those statements,  
20 referenced by Costa Rica, said what the Costa Rican Prosecutor  
21 had interpreted them as saying, then, Judge, I would be very  
22 hard-pressed to stand here and say what I'm about to say.  
23 Unfortunately, Judge, the statements attached in the Exhibits  
24 do not say what the Costa Rican Prosecutor has asserted that  
25 they say.

1           And this is set out, Judge, in our brief, with  
2 particularity. Judge, I believe it starts in Section B, on  
3 page 5 of our brief. And it's specific, Judge, if I'm not  
4 mistaken -- I'm sorry, Judge, it's in -- actually in Section C.  
5 And this is getting a little bit into what Mr. Orozco will be  
6 addressing, Judge --

7           THE COURT: Mmm-hmm.

8           MR. BAILEY: -- but there are specific inferences or  
9 misstatements, if you will, the meaning about what these  
10 statements say by the Costa Rican Prosecutor. And they are  
11 being relied upon by the Government to legitimize the extradite  
12 -- the extradition petition itself and saying, this is  
13 evidence.

14           There's no attestation here from the Costa Rican  
15 Prosecutor, under oath, that what he's saying is true. And  
16 because of that, Judge, when -- regardless of whether it's  
17 under the Rules of Evidence, as I've previously argued to the  
18 Court, or under Section 1 -- 3190, there has to be something  
19 that this Court can look at and say, here is evidence presented  
20 -- it's not just an assertion by a prosecutor that has no way  
21 of being contested, examined, reviewed, or determined to be  
22 accurate, unless you bring in the very documents he's referring  
23 to.

24           And so, Judge, as part of the Defense brief, we chose  
25 the first three things that he utilized. Those being: the

1 statements of Mariano Sandival (phonetic) Rodriguez, Martin  
2 Carvigel Villalabos, and Juan Carlos Stelof (phonetic). Those  
3 are the -- are -- are the -- the three initial documents that  
4 he asserts say certain things, that these victims saw Ms.  
5 Pacheco Bolanos do something or be in a certain place. But,  
6 when you read the actual statement, it does not say that,  
7 Judge. So it calls into question everything then that the  
8 Costa Rican Prosecutor would have liked this Court to just  
9 accept.

10           You know, Judge, for a long time I've been practicing  
11 as a lawyer and, pr -- prior to that, as a police officer. For  
12 a long time, I've known that the Court instruction to a jury  
13 that says, "False in one; false in all". And I would submit to  
14 the -- I'm sorry, Judge, that is an -- an instruction in the  
15 Superior Courts here in New Jersey. But I've been familiar  
16 with it, Judge, and it's always stuck with me that, once  
17 someone starts making something up, this is almost a -- a  
18 composite what the Prosecutor would like this Court to just  
19 accept is a composite of what he thinks his case says.

20           But, when he refers to the statements of specific  
21 people and then doesn't attach them, Judge, it calls into  
22 question why wouldn't you attach the statements? If they're  
23 going to say what you say they say, isn't that the best  
24 evidence? You know, Mr -- Mr -- Mr. Villalabos, he says, "X".  
25 There it is in his statement. That, Judge, I would submit

1 would be evidence that this Court would point at and go, "Mr.  
2 Bailey, nice argument, sit down."

3 Under these circumstances, Judge, I would submit  
4 that, regardless of the standard, whether or not you put it  
5 under 3190 or not, that there has to be evidence that is  
6 presented to this Court, not a composite narration that's  
7 unattested to by the Prosecutor in Costa Rica. I don't  
8 respectfully think that that comports with what even the low  
9 standard of extradition hearings requires.

10 And with that, Judge, I will defer now to Mr. Orozco,  
11 with the Court's permission.

12 THE COURT: Sure.

13 MR. BAILEY: Thank you, Judge.

14 MR. OROZCO: Your Honor.

15 THE COURT: Yes.

16 MR. OROZCO: The statements made in the extradition  
17 are conclusory at best. At worst, they are a misstatement and  
18 a clear misstatement of what is actually contained as far as  
19 the evidence is concerned. Lack of evidence renders any  
20 statement conclusory, Sindona 450 F. Supp. 672.

21 Judge, at this point in time, I would like to call to  
22 the stand Mr. Fernando Chucone (phonetic) Sanchez(sic). Your  
23 Honor, Mr. Sanchez(sic) is an attorney practicing in his native  
24 Costa Rica. He has been involved with this case, since the  
25 matter was brought for an extradition here in the United



1 States.

2 Your Honor, he is the perfect person in this -- in  
3 this courtroom today to authenticate the documents that have  
4 been previously submitted as part of the brief as Exhibits A,  
5 B, and C.

6 And, Your Honor, I would submit to the Court that, of  
7 course, Your Honor has to look at the evidence in the manner in  
8 which it was submitted and decide whether or not this evidence  
9 is explanatory or decide whether or not the evidence is  
10 contradictory. And I would submit to Your Honor that it is, in  
11 fact, explanatory.

12 Because what we are saying and what we are showing to  
13 the Court is, these are the statements contained in the  
14 petition, under paragraphs 3, 4, 5, 10, 11, 12, 13 through 16.  
15 And in those statements, Judge, which are contained in the  
16 petition by the translation, it states that these individuals  
17 were identified by the three persons that were previously  
18 identified. It -- it says, specifically, Judge, it couldn't be  
19 any clearer.

20 Now, I am submitting those -- those translated  
21 declarations, by which they rely upon in the petition, to  
22 explain what is actually said by those individuals. I'm not  
23 contradicting(sic) them -- I'm not contradicting them, Judge,  
24 I am explaining them further, so that the Court can understand  
25 what is actually contained in them.

1           At this point in time, Your Honor, I would request  
2   that Your -- that the Court allow Mr. Chucone to testify, with  
3   regards to the authentication of those documents.

4           MS. HERMAN: Your -- Your Honor, the Government  
5   objects to this witness as --

6           THE COURT: Can -- can I just --

7           MS. HERMAN: Sure.

8           THE COURT: -- can we go on hold for a minute.

9           MS. HERMAN: Sure.

10          THE COURT: --

11          COURT CLERK: Yes, Sir. Off the record?

12          THE COURT: Yeah.

13                 (Off the record. Back on the record)

14          COURT CLERK: Okay, Judge.

15          THE COURT: You were objecting.

16          MS. HERMAN: I was objecting, Your Honor. This  
17   witness cannot authenticate those three documents in question.  
18   He's not the proper person to do that, Your Honor. And, you  
19   know, the statements that they're offering are not explanatory,  
20   you know, if any -- if anything they support what the -- what  
21   the witnesses saw. What they saw was a woman, similar to the  
22   fugitive with her characteristics. And it supports all the  
23   other instances of probable cause that we've laid out in our  
24   brief and that I mentioned to the Court earlier today.

25                 And what the Defense is looking to do is have -- is

1 -- is have the case tried here, and that defeats the entire  
2 purpose of the extradition proceeding. And we have to take the  
3 Prosecutor's statements in those documents at face value and as  
4 being true. So we ask that this witness not be allowed to  
5 testify today.

6 MR. OROZCO: Your Honor, may I respond?

7 THE COURT: Sure. Just one s --

8 (Pause in hearing)

9 THE COURT: Yes.

10 MR. OROZCO: Your Honor, if the statements contained  
11 therein are authenticated, how in the world can they be  
12 contradictory. This is the very evidence which Costa Rica is  
13 relying upon in order to support their extradition.

14 Now, as far as Mr. Chucone being the custodian of  
15 records, Your Honor, if I recall correctly, and, in fact, I do,  
16 you, yourself, stated, Rules of Evidence don't apply in here.  
17 Hearsay is perfectly admissible. And this is the exact same  
18 situation.

19 And there is plenty of case law, which I need not  
20 recite right now, but I will get to very -- ver -- later,  
21 plenty of case law where there have been a multitude of -- of  
22 witnesses that have come to testify at an extradition on behalf  
23 of both the extraditing state, as well as on behalf of the  
24 defendant. This is perfectly permissible, Judge.

25 MS. HERMAN: Your Honor, if he's not the custodian of

1 records, what value will he contribute by testifying here  
2 today?

3 MR. OROZCO: Your Honor, m -- if I may respond, this  
4 -- this individual is an attorney in Costa Rica, and he can  
5 testify about the manner in which records are kept there in  
6 Cartago and the fact that there -- there's a stack of papers  
7 right here. This is the exact same stack of papers that is  
8 contained in Cartago, with regards to this matter. And it's  
9 all the evidence.

10 And that information and the -- and the de -- and the  
11 statements that were taken and given to the Court as Exhibits A  
12 through B(sic) -- A through C were taken from there. He can  
13 testify about that.

14 The fact that he's not the custodian of records is of  
15 no -- is of no relevance. Moreover, Judge, again, it's  
16 hearsay. And hearsay is admissible in an extradition.

17 THE COURT: I want to understand what exactly your --  
18 your contention is. There are three statements attached to  
19 your papers.

20 MR. OROZCO: Correct, Judge.

21 THE COURT: Now are you saying that they've been  
22 improperly translated, is that the claim?

23 MR. OROZCO: I -- I -- Your Honor, they haven't been  
24 translated.

25 THE COURT: They haven't been translated.

1 MR. OROZCO: There's a -- there's a -- it's a  
2 complete -- it's -- it's a c -- it -- the -- the extradition  
3 petition states, and I recited the paragraphs, Judge, 3 through  
4 5 and 10 through 16. It states specifically what these  
5 individuals saw. It couldn't be any clearer. There's no  
6 translation there, because there is no evidence, Judge. There  
7 is no evidence, because those statements don't actually contain  
8 that information.

9 And that's why we have submitted that. It's  
10 explanatory, Judge. And it can't be considered contradictory,  
11 because I'm submitting the very evidence which they're relying  
12 upon in order to support their extradition petition.

13 And Mr. Chucone can testify about those contents; how  
14 they were obtained; and from whom.

15 If anything, Judge, it is -- it is perfectly  
16 admissible, because I -- I -- I -- I don't need him in order to  
17 b -- I don't need him as custodian of records. And, if hearsay  
18 testimony is admissible in a extradition hearing, this is  
19 exactly what hearsay would be --

20 THE COURT: But what --

21 MR. OROZCO: -- an individual whose testi --

22 THE COURT: -- yeah, give me an offer of proof. What  
23 is this witness going to say? What -- what is it that the  
24 general substance of this testimony?

25 MR. OROZCO: He can identify a document, Judge. He

1 can -- he can say possibly that is the exact same document that  
2 was relied upon -- that is contained -- I'm sorry -- that is  
3 contained in the records in Cartago, in Costa Rica, and is the  
4 only document that references any statements provided by the  
5 three individuals named in the extradition petition.

6 THE COURT: And -- and how does he have the -- the  
7 knowledge or the ability to do that?

8 MR. OROZCO: And I will explain it, Your Honor, in  
9 further detail, I hope, if he's allowed to testify. But  
10 basically the way it functions in -- in Costa Rica, Judge, it  
11 -- it is my understanding that, whenever documents are  
12 submitted in a case, they are kept in a -- basically in a file,  
13 if you will, in the court, in Cartago.

14 And, as documents are accumulated and as evidence is  
15 accumulated, declarations and so on and so forth, those  
16 documents are put into that file. And any attorney in Costa  
17 Rica can go to Cartago, request that that file be opened and  
18 then take a look at it. And everything is available, Judge,  
19 everything, at any point in time.

20 And he's al -- Judge, and I would submit to the  
21 Court, he's also the attorney in Costa Rica who's representing  
22 Ms. Pacheco Bolanos, with regards to the matters that are --  
23 that are -- that are ensuing there. Obviously, they're waiting  
24 for this extradition hearing to be over with, but he can  
25 testify to that as well.

1           Your Honor, I would submit to the Court that it is --  
2   that it is the very definition of hearsay, and hearsay is  
3   admissible at an extradition hearing.

4           THE COURT: Well, hearsay is admissible, but I mean,  
5   you're -- we're jumping over a whole level of law. I mean,  
6   there -- there are -- there are facts that have been certified  
7   to this Court. I have the documents here by the -- the  
8   Consulate General of the United States, by -- by authorities in  
9   Costa Rica. The -- the extradition statute is -- is -- is  
10   clear on its face. I suppose this entire line of -- of  
11   argument is -- is premised on the fact that you're saying that  
12   the -- the extradition statute shouldn't control.

13           MR. OROZCO: Well --

14           THE COURT: I -- I think that was what Mr. Bailey was  
15   saying. So we're already, to some extent, very far afield,  
16   when we have documents that were signed and sealed, that  
17   include the -- the indictment and, you know, to -- to this  
18   Court seem authentic, within the -- the context of the removal  
19   statute.

20           Having said that, and I -- I think it's going to be a  
21   limited -- a -- a limited testimony that the Court will hear,  
22   I'll allow this witness in and see where it's going.

23           MR. OROZCO: Thank you, Judge. Mr. Chucone.

24           MS. HERMAN: Your -- Your Honor?

25           MR. OROZCO: Your Honor, we're going to need the --

1 the services of the interpreter.

2 THE COURT: Pardon me?

3 MS. HERMAN: Your --

4 MR. OROZCO: We're going to need the services of the  
5 interpreter for Mr. Sanchez(sic).

6 THE COURT: Okay.

7 MS. HERMAN: Your -- Your Honor, we want to make sure  
8 that the testimony of this witness is limited to how he  
9 obtained the documents and not with regard to the substance of  
10 what the documents say.

11 THE COURT: I -- I agree with that. I -- I said this  
12 is going to be a very limited -- I -- I think I'm being  
13 indulgent, in this respect, in allowing this. We nor -- we  
14 don't normally have witnesses such as this testify. But go  
15 ahead.

16 COURT CLERK: The witness, if you'd please come  
17 forward and make a spot.

18 (Pause in hearing)

19 F E R N A N D O S A N C H E Z C H U C O N E, DEFENDANT'S  
20 WITNESS, SWORN

21 THE COURT: Now, Mr. Orozco, please get right --  
22 right to the -- to the point with this witness.

23 THE WITNESS: Fernando Sanchez Chucone.

24 THE COURT: Have a seat.

25 MR. OROZCO: Your Honor -- Your Honor, may I approach



1 the witness?

2 THE COURT: Sure.

3 (Pause in hearing)

4 DIRECT EXAMINATION BY MR. OROZCO:

5 Q Mr. Chucone, before you are what has been marked as  
6 Defense Exhibits D-1 through D-3. Do you recognize those  
7 documents?

8 A Yes, sir.

9 Q Can you tell me what D-1 is?

10 A This is the testimony of Mariano Jesus Sandival Rodriguez.

11 Q And when was that testimony taken?

12 MS. PARK: Objection, Your Honor. He is no --  
13 he hasn't --

14 MR. OROZCO: I'm establishing the foundation --

15 MS. PARK: -- established any --

16 MR. OROZCO: -- Judge.

17 MS. PARK: -- foundation, Your Honor, for his  
18 testimony as to what this -- what this document is. He hasn't  
19 --

20 MR. OROZCO: That's exactly what the question is  
21 asking, Judge: when it was taken. And --

22 MS. PARK: You're --

23 MR. OROZCO: -- he's going to get to that -- I'm  
24 going to get to that foundation --

25 THE COURT: I'm --

1 MR. OROZCO: -- from another question --

2 MS. PARK: Tech -- generally --

3 THE COURT: Ms. Park, I -- I'm going to allow it --

4 MS. PARK: Okay.

5 THE COURT: -- at this point, in the --

6 MS. PARK: Yes, Your Honor.

7 THE COURT: -- interest as -- of -- of just moving  
8 the -- the process --

9 MS. PARK: Yes, Your Honor.

10 THE COURT: -- forward. Go ahead.

11 BY MR. OROZCO:

12 Q Can you tell me when that document is dated?

13 A December of '96.

14 Q And how did you come to obtain this document?

15 A This is a true copy of the document that is in the file in  
16 Cartago, Costa Rica.

17 Q And how did that document come to be in Cartago?

18 A This document is part of the docket that is right there.

19 Q Have you had an opportunity to review that document  
20 before?

21 MS. PARK: Again, for the record, Judge, I object to  
22 this whole line of questioning.

23 THE COURT: Well.

24 BY MR. OROZCO:

25 Q You may respond to the question.

1 A I have reviewed it many times.

2 THE COURT: Go ahead, Mr. Orozco.

3 BY MR. OROZCO:

4 Q Are you licensed as an attorney in Costa Rica?

5 A Yes, sir.

6 Q And -- and as a licensed attorney in Costa Rica, do  
7 you have access to that file in Cartago?

8 A Yes, sir.

9 Q And have you reviewed those copies of the statements,  
10 the police statements, that have been submitted to you in Costa  
11 Rica?

12 A I reviewed the original and the copy, and they are the  
13 same.

14 Q And they are -- they are exact -- they are exactly  
15 the same, correct?

16 A Correct, sir.

17 Q Do you represent Maria Pacheco Bolanos in the matter  
18 presently in Costa Rica?

19 A Yes, together with Bernie Masala (phonetic) Rodriguez  
20 Chucone.

21 MR. OROZCO: Your Honor, at this point in time, I  
22 have no more questions, based upon the fact that I've been  
23 limited to his knowledge of the -- of the documents and where  
24 they were obtained from. And, based upon the fact that I've  
25 laid a sufficient foundation: he's an attorney in Costa Rica;

1 he's licensed to practice; he's viewed those documents; he's  
2 seen the copies, both in Costa Rica and in here; he's  
3 identified them as authentic copies, I would submit that these  
4 documents be admitted into evidence as D-1, D-2, and D-3, as  
5 previously submitted in our memorandum as Exhibits A, B, and C.

6 THE COURT: Ms. Park, to you.

7 CROSS EXAMINATION BY MS. PARK:

8 Q Mr. Chucone, you stated earlier that you're a  
9 licensed attorney in Costa Rica, is that right?

10 A Yes.

11 Q And you represent the defendant in the trial where  
12 she was charged with accessory to commit a murder?

13 A Yes, I have been named a co-counsel.

14 Q Okay. So the defendant has paid you to represent her  
15 in Costa Rica, is that right?

16 A Her brother paid me.

17 Q Okay, and how much have you paid -- been paid by --

18 MR. OROZCO: Objection, Your Honor, rel --

19 MS. PARK: -- her brother to --

20 MR. OROZCO: -- relevance. I mean -

21 MS. PARK: Relevance --

22 MR. OROZCO: -- if she's trying to get at the fact  
23 that he's a paid attorney, I mean, what -- what difference does  
24 it make if he's a paid attorney or a public defender?

25 THE COURT: I'll allow it and -- and not much more.

1 This type of a --

2 MS. PARK: Yes, Your Honor.

3 THE COURT: -- a question, Ms. Park.

4 BY THE COURT:

5 Q You can answer the question.

6 A Do you mean how much did I charge?

7 Q I think that's what was asked.

8 A \$2,000. But, so far, I have not received one penny.

9 Q Okay. And are you -- do you have -- do you work at  
10 any capacity with the court in Costa Rica?

11 A For 30 years, I worked with the police in one of the  
12 states in Costa Rica. I have retired from that, and now I  
13 practice as an attorney.

14 Q Okay. But you do not work in any capacity, in terms  
15 of being a custodian of the court with respect to documents  
16 such as these that you've referred to, isn't that right?

17 A No, no, I am now retired. I work from the outside.

18 Q Okay. So, in terms of obtaining these documents, all  
19 you can testify to is actually going to the court to get a copy  
20 of those documents, is that -- is that right?

21 A First, I review the document, the original. Afterwards, I  
22 obtained the copies. I did not make the copies myself. The  
23 court make the copies and gave them to me. And the last day, I  
24 went to review the documents in the docket was on Thursday, the  
25 day before I came here. I came here on Friday, and I went to

1 make sure that nothing new had been added.

2 Q So you received a copy of these documents from the  
3 court before, isn't that right?

4 A Well, he says, not the clerk. He says, there is a lady  
5 there that takes care of you once she gives you the copies.

6 Q Okay. And other than that, you've had no involvement  
7 in actually producing these documents.

8 A I do not understand your question.

9 Q You just received a copy of these documents, is that  
10 right?

11 A Yes.

12 Q You didn't -- you didn't -- you weren't involved with  
13 producing or keeping these documents for the court.

14 A No.

15 MS. PARK: No further questions, Your Honor.

16 THE COURT: Thank you. Thank you, Sara. Okay.

17 (Pause in hearing)

18 MR. OROZCO: Thank you, Mr. Chuccone.

19 Your Honor, I'd like to continue please. The -- the  
20 issue of -- of -- of probable cause and sufficient the evidence  
21 is really what we're attacking here. The petition doesn't  
22 contain any -- any evidence, and the evidence is what is  
23 necessary in order to prove -- in order to have that probable  
24 cause.

25 Now, the AUSA points out to Illinois versus Gates

1 that standard of probable cause. Judge, in that case the US  
2 Supreme Court decided that there needed to be corroboration in  
3 order to arrive at probable cause; sufficient evidence which  
4 supports the facts that a reasonable person could articulate  
5 would lead to someone being charged with the crime.

6 But, Judge, let's go to the Standards of Evidence  
7 that I'd like to point out in the numerous cases as cited by  
8 the AUSA: *In re David*, 395 F. Supp. 803; French Extradition.  
9 What happened? Affidavits, petitions, and declarations were  
10 attached -- I'm sorry, affidavits and declarations were  
11 attached to the petition.

12 Mackaratoma (phonetic) versus Reno, 573 F. 2d 1360.  
13 Again, in that case, Judge, actually, the original petition was  
14 denied, because there was no evidence attached to the petition.  
15 And it wasn't until after the Government supplied additional  
16 declarations that the extradition was granted.

17 *In re Sindona*, 450 F. Supp. 672, US v. Marasco, 325  
18 F. 2d 562. Judge, the list goes on and on: Vangen v. Valey  
19 (phonetic), Glucksman v. Henkel, Sakaguchi v. -- I can't even  
20 pronounce that last name - it's 520 F. 2d 726, Judge. The  
21 Court goes on to state that there was a ton of evidence  
22 submitted on behalf of the requesting state when they were  
23 murder charged from Japan. And Marino versus Marshall  
24 (phonetic), *In re Ryan*, *In re Mahood* (phonetic) Abu Marzook,  
25 924 F. Supp. 592. Judge, all of these cases stand for the fact

1 that the petition must be accompanied by sufficient evidence.

2 And, when you look at the actual article contained in  
3 the treaty, Judge, I would submit to you that, under Article 9,  
4 what does it state? It states that, when an individual has  
5 been charged with the crime, they must submit sufficient  
6 evidence in order to find probable cause in the requesting  
7 state, and that is here.

8 If I were an AUSA, Judge, and I came to you and I  
9 said to you, Your Honor, I'd like a warrant. And you're going  
10 to base it simply upon what I say and nothing more: there's no  
11 affidavit; there's no corroborating evidence; there's nothing.  
12 I -- I'm -- I'm -- I'm -- I'm hoping that Your Honor wouldn't  
13 grant such a request, because you would need sufficient  
14 evidence to support the issuance of that warrant, probable  
15 cause, and it's not here, Judge.

16 And I want to differentiate some of the cases that  
17 are brought by the AUSA, because I think what it does is it  
18 really sets that standard, Judge, based upon Article 9 and that  
19 requirement that the evidence be submitted with the petition.

20 Bloomfield versus Gangler(phonetic), 507 F. Supp. 925;  
21 Spitola (phonetic) versus US, 925 F. Supp. 615; and US versus  
22 Fernandez, 99 F. Supp. 1358. In each of those three cases,  
23 Judge, the petition for extradition was granted, after the  
24 defendants had been found either guilty, or after they had been  
25 already sentenced after a finding of guilty in the requesting



1 state.

2 And in those cases the Court stated that there was no  
3 need for additional supplemental evidence, based upon the fact  
4 that a finding of guilt in the requesting state was per se  
5 probable cause. That is not the case here.

6 The article, Article 9, is clear in the treaty,  
7 Judge. The petition must be accompanied by sufficient evidence  
8 to support a finding of probable cause.

9 I would -- I'd like to add, Judge, that, based upon  
10 the fact that Article 10 states that, if the requested state  
11 considers the documents furnished in support of the request to  
12 be insufficient, that you may request that additional  
13 documentation be provided.

14 And I would submit to Your Honor that that is, in my  
15 opinion, humbly and respectfully, Judge, the only likely  
16 conclusion that can be had at this point in time, based upon  
17 the fact that there is nothing, not one iota, not one scintilla  
18 of evidence that is submitted with the petition.

19 And, Your Honor, I'd just like to close by stating  
20 that, based upon that, Republic of France versus  
21 Magdum(phonetic), Six fif -- 617 F. Supp. 777 -- 777. Judge,  
22 in that case, the Court stated it succinctly, the harsh results  
23 of an erroneous extradition, based upon untwerst(sic) --  
24 untrustworthy accusations mitiate(phonetic) a Court against  
25 applying too lenient a standard of review in determining

1 probable cause.

2           And that's what I would submit to Your Honor, at this  
3 point in time. That it is an entirely too mean standard of  
4 cause to simply accept the petition extradi -- an extradition  
5 petition from Costa Rica, which is certified, without any  
6 accompanying evidence to actually bolster what they are  
7 stating, after the fact that we have submitted, Judge,  
8 statements which clarify and explain what is actually contained  
9 in an extradition petition. That it is not a fact these  
10 individuals ever positively identified the defendant as having  
11 -- having been at the place where the -- where the -- the  
12 murder took place.

13           Judge, I would submit to you, on behalf of the  
14 defendant, that, based upon that, based upon the fact that the  
15 requesting state has clearly not met the burden of proof, shall  
16 we say, for the sufficiency of evidence, that Your Honor deny  
17 this request. At a minimum, give them more time to supply that  
18 -- that additional information.

19           I just want to point out one more thing, Judge. When  
20 this was originally scheduled, the -- requested more time. We  
21 were under the impression, and I can't state what the -- what  
22 the -- what the strategy was for that, but under the impression  
23 that they were going to get additional evidence. None of that  
24 was obtained. They've had sufficient time to submit it, Judge.

25           We request that extradition petition be denied, at

1 this point in time, and that Ms. Bolanos be released, or, at a  
2 minimum, additional time. And we request that she be given the  
3 opportunity to be given GPS monitoring, a bail, or something  
4 else along those lines, Judge, so that she can go home and see  
5 her family.

6 As been submitted in the brief, under Exhibit E, if  
7 I'm not mistaken, the report of Ms. Kahn (phonetic), this  
8 arrest and detention has had a serious impact upon the family.

9 THE COURT: Thank you.

10 MS. PARK: Your Honor, I want to remind the Court  
11 that there is sufficient probable cause here. In -- in October  
12 of 1998, a court in Costa Rica saw fit to indict this defen --  
13 this fugitive. And they found that there was sufficient  
14 evidence to, you know, indict her and bring her to trial.

15 She fled in January of 1999. And, you know, did --  
16 the Court did not have an opportunity to proceed with  
17 additional proceedings against her.

18 Flight is an evidence of guilt, in this particular  
19 case. And I ask that the Court take that under consideration.

20 And I, you know, we laid out all the probable cause  
21 in our brief, Your Honor. As mentioned before, the three  
22 statements that they've submitted and asked that you take into  
23 evidence is merely looking to contradict the more than  
24 sufficient PC that the Government has put forward.

25 That's all I have, Your Honor. Thank you.

1           THE COURT: All right. Thank you. I am going to  
2 reserve decision on this and issue a -- a written opinion. The  
3 request for bail is denied. There is no basis for that at this  
4 point. And indeed that issue was addressed fully in the  
5 special context of an extradition proceeding, when the  
6 defendant initially appeared before me.

7           Okay, Counsel?

8           MR. BAILEY: Your Honor?

9           THE COURT: Yes, sir?

10          MR. BAILEY: May we be permitted to provide a  
11 supplementary belief(sic) -- brief, at this point in time. If  
12 it acceptable to Your Honor, within 10 --

13          THE COURT: You know, I -- I will allow each side to  
14 submit a five-page letter brief, which should be submitted by  
15 Monday, on this, if they wish. And the only reason for that is  
16 there are things that were mentioned here today in court that  
17 were not mentioned as part of these papers, including a letter  
18 which I -- I still haven't seen, which was made part of this  
19 record. I'm going to give each side the -- the opportunity to  
20 submit five-pages of letter brief, if they wish. Okay?

21          MR. BAILEY: Thank you, Judge.

22          MS. PARK: Timing wise, Your Honor?

23          THE COURT: That should be in by Monday.

24          MS. HERMAN: Monday.

25          MS. PARK: Okay. Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. BAILEY: Judge, from me --

3 THE COURT: All right, yes.

4 MR. BAILEY: -- have a happy holiday.

5 THE COURT: You too.

6 MR. BAILEY: Thank you, Judge.

7 THE COURT: Thank you.

8 MS. HERMAN: Thank you.

9 MS. PARK: Thank you, Your Honor.

10 COURT CLERK: All rise.

11 THE COURT: Get my civil case in here right now,  
12 please.

13

14

15

16

17

18

19

20

21

22

23

24

25 (Whereupon, at 11:58:48 a.m. the hearing was adjourned.)

CERTIFICATE

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

S/ Sonia Undseth  
Signature of Assigned Transcriber

February 2, 2009  
Date

Sonia Undseth, Assigned Transcriber  
King Transcription Services  
65 Willowbrook Boulevard  
Wayne, NJ 07470  
(973) 237-6080